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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

BEEHIVE TELEPHONE COMPANY, INC.
BEEHIVE TELEPHONE, INC. NEVADA

Tariff F.C.C. No. 1

To: Chief, Common Carrier Bureau

)
)
) CC Docket No. 97-249
)
)
) Transmittal No. 8
)

SUPPLEMENT AND ERRATUM TO
DIRECT CASE

Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively "Beehive"), by their attorney, hereby supplements Exhibit 3 of their Direct Case in this proceeding by providing the Commission with one 3.5 inch computer disk ("disk"), in Lotus Release-3 format, containing additional subsidiary records information.

Additionally, Beehive corrects typographical errors in their Direct Case by providing the Commission with revised pages 8, 13, 14, 17, and 31 which are attached hereto. These pages have been corrected as follows:

Page 8:

First full paragraph, line 3, "12994" has been changed to "1994".

Second full paragraph, line 7, "\$54,138" has been changed to "\$64,276".

Third full paragraph, line 3, "Beehive Nevada" has been changed to "Beehive Utah".

Page 13:

Last paragraph, line 4, "§ 32.5999(a)(3)" has been changed to "47 C.F.R. § 32.5999(a)(3)".

No. of Pages rec'd. 027
Date Rec'd.

Page 14:

First paragraph, line 5, "reimbursements" has been deleted as there are none.

First paragraph, line 6, "and 1995 (Beehive Nevada only)" has been deleted as it was not provided.

First full paragraph, line 1, "five" has been changed to "two".

Page 17:

First full paragraph, line 2, "Exhibit 4" has been changed to "Exhibit 5".

Page 31:

Last paragraph, line 2, "\$309,244 in 1995" has been changed to "\$309,244 in 1994".

Footnote 6 "Exhibit 4" has been changed to "Exhibit 5".

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.
BEEHIVE TELEPHONE, INC. NEVADA

By 

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Their Attorneys

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April 8, 1998

CERTIFICATE OF SERVICE

I, Katherine A. Baer, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 8th day of April, 1998, had a copy of the foregoing SUPPLEMENT AND ERRATUM TO DIRECT CASE hand-delivered to the following:

Jane E. Jackson, Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N. W., Room 518
Washington, D. C. 20554

International Transcription Service
1231 20th Street, N. W.
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295 North Maple Avenue, Room 3250J1
Basking Ridge, New Jersey 07920



Katherine A. Baer

*via facsimile and Federal Express

3,328,646 minutes for the year. In order to handle the increased traffic, Beehive leased additional switching equipment from JEI and Dave Goodale in 1995. Consequently, its lease costs increased from \$246,601 in 1994 to \$796,074 in 1995 (or 54.7% of Beehive's plant specific expenses).

Beehive's legal and accounting costs rose from \$557,236 in 1994 to \$954,594 in 1995 (or 59% of its corporate operations expenses). Legal expenses totalled \$309,224 in 1994 and \$727,395 in 1995. The increase in Beehive's legal expenses were related to its efforts to increase its MOUs.

Beehive's plan to market a new 800 service required it to challenge the 800 Service Management System ("SMS/800") before the Commission. See *infra* pp. 17-20. Moreover, Beehive's arrangement with JEI resulted in litigation with AT&T and MCI Telecommunications Corp. ("MCI") before the Commission and a federal district court. See *infra* pp. 26-29. The SMS/800, AT&T and MCI litigation caused Beehive to incur legal expenses that totalled \$64,276 in 1995.

Most of the increased legal expenses experienced by Beehive in 1995 resulted from litigation involving the ownership and control of Beehive Utah. Control of Beehive Utah and its assets were at issue in four state court actions. Beehive incurred legal expenses totalling \$554,536 as a result of this "shareholder litigation". Those expenses accounted for 76% of the Company's legal expenses in 1995.

Beehive's TOE decreased from \$3,553,932 in 1995 to \$3,207,674 in 1996, while its TOE/TPIS ratio dropped from 68.19% to 52.87%.

The expenses Beehive incurred to stimulate traffic were directly related to its switched access services, because the expenditures increased the use of those services and decreased costs to Beehive's customers. For example, in 1994 Beehive's per minute premium access charge for one mile of transport was \$.30458. Under Beehive's 1997 tariff rates, that charge had dropped 80.65% to \$.05893. Similarly, Beehive's non-premium charge dropped from \$.13711 to \$.02659. Thus, Beehive's interexchange carrier customers benefited from increased usage at lower access costs.

ARMIS Reports

As directed by the Commission, Beehive is submitting one 3.5 inch computer disk ("disk"), in Lotus Release-3 ("Lotus") format, containing ARMIS Reports for calendar years 1994, 1995, and 1996. See *infra* Exhibit 1. These reports were given to the Commission in three previous filings (once on December 15, 1997 and twice on December 29, 1997).

General Ledger

Exhibit 2 hereto consists of five disks, in Lotus format, which contain Beehive's general ledgers for calendar years 1994, 1995, and 1996.

Subsidiary Records Information

As previously explained in its Motion for Extension of Time, filed April 3, 1998, as a Class B LEC, Beehive is required to maintain subsidiary expense records only if so directed by the Commission. See 47 C.F.R. § 32.5999(a)(3). The *Designation Order* directs Beehive for the first time to produce those records. This has

resulted in a severe accounting burden to Beehive to produce the requested records. Exhibit 3 consists of one disk, in Lotus format, containing Beehive's subsidiary records information produced thus far. Exhibit 3 includes salaries and wages, benefits, and rents for calendar years 1994, 1995, and 1996; and other expenses for calendar years 1994. Exhibit 3 does not include information related to clearances. Information requested, but not provided, will be submitted as a supplement to Beehive's Direct Case as soon as possible.

Lease Agreement Expenses

Exhibit 4 hereto consists of two lease agreements. Beehive does not have any capital leases.

Legal Expenses

The Commission presumes that all litigation costs (other than those engendered by federal antitrust violations) "arise out of events occurring in the normal course of providing service to ratepayers, and that ratepayers benefit from provision of service." *Accounting for Judgments and Other Costs Associated with Litigation*, 12 FCC Rcd 5112, 5144 (1997) ("*Litigation Costs*"). Beehive is entitled to that presumption. All of its litigation expenses arose out of the ordinary course of business.

Beehive respectfully submits that it should not be required to "explain how interstate access customers benefitted from each of [its] court actions and administrative proceedings". *Designation Order* at 6. The relevant issue is not whether the litigation itself benefitted ratepayers, but whether the litigation arose in the ordi-

it incurred in a particular agency or judicial proceeding. Such specificity is not possible with respect to complex litigation which encompassed multiple, interrelated proceedings in which Beehive was represented by several attorneys or law firms. Litigation expenses in such cases were often invoiced as one matter, which now makes it difficult to apportion the expenses among the interrelated proceedings. Beehive will provide the Commission with the total legal expenses it incurred in such complex litigation.

For ease of reference, Beehive will refer to each litigation matter as it is identified in Exhibit 5. However, that reference should not be construed to reflect the nature of the litigation.

The "Bellcore" Litigation

In March 1994, Beehive filed a formal complaint (File No. E-94-57) against the Bell Operating Companies ("BOCs") alleging that access to the SMS/800 is not subject to tariff regulation under Title II of the Communications Act of 1934, as amended ("Act"). The Commission denied Beehive's complaint in October 1997, and the matter is pending judicial review before the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). Oral argument in the case is scheduled for October 9, 1998. For the decisions in the SMS/800 complaint case, *see Beehive Telephone, Inc. v. The Bell Operating Companies*, 10 FCC Rcd 10562 (1995), *vacated and remanded*, *Beehive Telephone, Inc. v. FCC*, No. 95-1479 (D.C. Cir. Dec. 27, 1996), *reinstated*, *Beehive Telephone, Inc. v. The Bell Operating Companies*, 12 FCC Rcd 17930 (1997), *petition for review filed*, *Beehive Telephone Co., Inc. v. FCC*, No. 97-1662 (D.C.

telephone service except for Beehive's telephone. There are life-threatening emergencies daily at Dangling Rope in the summer months. Visitors have no access to even emergency phones. The engineering aspects of Dangling Rope's service area formidable. NPS restrictions have prevented Beehive from siting relay equipment where constantly reliable radio signals facilitate optimal service, and there have been many complaints about the service reliability. Beehive has attempted to upgrade the system, but cannot unless the NPS reasonably accommodates the engineering requirements, which NPS has refused to do.

The District Court issued a TRO for Beehive and ultimately found in Beehive's favor. Beehive continues to provide telephone service at the Dangling Rope Marina.

Beehive incurred legal expenses of \$7,745 in 1995, and \$34,060 in 1996, in connection with its District Court action against NPS. ^{6/}

Summary

A detailed in Exhibit 5, Beehive's legal expenses totalled \$309,224 in 1994, \$727,395 in 1995, and \$273,009 in 1996. However, its legal fees for agency proceedings and court actions were as

^{6/} Exhibit 5 lists legal expenses incurred in connection with "Dangling Rope" but not in connection with Beehive's 1996 District Court action. Those expenses reflect fees engendered by regulatory matters before the Commission and the UPSC. For example, Beehive incurred expenses in 1995 in seeking Commission authorization to improve or maintain its radio links to the Dangling Rope Marina. Those expenses include fees for related engineering services provided by engineers employed by undersigned counsel's firm.

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.
- o Microfilm, microform, certain photographs or videotape.
- ✓ Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

One computer disk.